

## **Fact Sheet: Final Title X Rule Detailing Family Planning Grant Program**

Earlier this year, the Department of Health and Human Services issued a final rule to revise the regulations governing the Title X family planning program. This week, the Office of Population Affairs informed the Title X grantees that compliance with the requirements of the Final Rule, except for the physical separation requirements, was required as of Monday, July 15, 2019.

### **Background**

Title X is the only federal program dedicated solely to the provision of family planning and related preventive services tailored to individual needs, with priority given to those from low income families. Established in 1970, the program provides funding “to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents).”<sup>1</sup>

Pursuant to Congressional mandate, family participation is to be encouraged, particularly in services involving adolescents. And, from the start, Congress was clear that Title X funds cannot be used to support abortion.<sup>2</sup>

The Title X program serves approximately 4 million clients every year. This final rule ensures that grants and contracts awarded under this program fully comply with the statutory program integrity requirements, thereby fulfilling the purpose of Title X, so that more women and men can receive services that help them consider and achieve both their short-term and long-term family planning needs.

### **Summary of Final Rule**

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<sup>1</sup> PHS Act § 1001(a), 42 U.S.C. § 300(a).

<sup>2</sup> “None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.” PHS Act § 1008, 42 U.S.C. § 300a-6.

The regulations governing the Title X program have not been substantially updated since 2000. Since then, the need to clarify and ensure compliance with the statutory intent of the program has only increased. The major provisions of the 2019 Title X regulation are summarized below.

Ensures program integrity, consistent with statutory purpose.

- Prohibits the use of Title X funds to perform, promote, refer for, or support abortion as a method of family planning.
- Permits, but no longer requires, nondirective pregnancy counseling, including nondirective counseling on abortion.
- Provides for clear financial and physical separation between Title X and non-Title X activities, reducing any confusion on the part of Title X clinics and the public about permissible Title X activities between the two.
- Improves transparency by requiring grantees to describe subrecipients and referral partnerships, demonstrating a seamless continuum of care.
- Increases accountability, ensuring that grant recipients and their subrecipients understand permissible and impermissible activities under the Title X program.
- Overall, ensures the program is consistent with the underlying statute.

Summary: Of particular significance, the 2019 regulation focuses on compliance with the underlying Title X statute. In addition, it provides clarity between permissible Title X activities and impermissible ones by requiring clear financial and physical separation for Title X funded programs from programs and facilities where abortion is a method of family planning.

Protects the patient/healthcare provider relationship.

- Removes the requirement for abortion referral, replacing it with a prohibition on referral for abortion as a method of family planning.
- Permits, but no longer requires, nondirective pregnancy counseling, including on abortion. It is not a “gag rule”. Health professionals are free to provide non-directive pregnancy counseling, including counseling on abortion.

- Requires referrals for those conditions deemed medically necessary.
- Ensures conscience protections for Title X health providers by eliminating the requirement for providers to counsel on and refer for abortion.

Summary: The 2019 regulation places a high priority on preserving the patient/healthcare provider relationship, in order to promote optimal health for every Title X patient. As such, it requires medically necessary referrals, such as referrals for prenatal care. To preserve open communication between the patient and the healthcare provider, the regulation permits, but no longer requires, nondirective pregnancy counseling, including nondirective counseling on abortion. Consistent with the statutory requirement that no funds may be expended where abortion is a method of family planning, this regulation no longer requires, and affirmatively prohibits, referral for abortion as a method of family planning.

#### Protects women and children from victimization

- Ensures compliance with state reporting laws and consistency of care for women who visit Title X clinics and are victims of sexual abuse, intimate partner violence, incest, or human trafficking.
- Ensures that children who visit Title X clinics and are victims of rape, incest, child abuse, child molestation, or human trafficking are protected under the law.
- Requires that minors be counseled on how to resist coercion to engage in sexual activity.

Summary: This final rule includes a stronger focus on protecting women and children from being victimized by child abuse, child molestation, sexual abuse, rape, incest, intimate partner violence, and trafficking. The regulation requires all Title X clinics to provide annual training for staff and to have a site-specific protocol in place to report crime and protect victims.

#### Boosts meaningful family communication, especially in adolescent family planning

- Meaningfully encourages parent/child communication in family planning decisions, and requires documentation of such encouragement.

**Summary:** Almost 1 in 5 Title X clients are adolescents. This final rule requires clinics to meaningfully encourage parent/child communication. As required by law, Title X clinics must encourage family participation in family planning decision-making, particularly a minor's decision to seek family planning services. As part of counseling of minors, they should provide practical ways to begin – and maintain – such communication.

#### **Expands coverage, partnerships and innovation**

- Focuses on innovative approaches to expand Title X services to unserved and underserved areas.
- Targets sparsely populated areas historically without Title X services.
- Improves Title X services by encouraging diverse and non-traditional Title X partners.
- Prioritizes innovation, partnerships and expansion of the number served by changes in selection criteria for grant proposals.
- Permits those unable to obtain employer-sponsored insurance coverage for certain contraceptive services due to their employer's religious beliefs or moral conviction to be considered for Title X services.

**Summary:** The final rule adds provisions that are designed to increase the number of patients served within the Title X program by placing special focus on reaching more unserved or underserved areas, by increasing innovation within the program, expanding diversity of grantees and partners, and clarifying the flexibility that program directors have to provide services to those in need of family planning services.

#### **Returns Title X flexibility to states and other grantees**

- Restores States' ability to prioritize funding according to the needs of the populations.
- Formally revokes the 2016 rule, which put unnecessary restrictions on states and other grantees and which had been rendered void by a joint resolution of disapproval passed by Congress under the Congressional Review Act and signed by the President.

**Summary: The final rule officially revokes a 2016 Title X regulation that limited the ability of States and other Title X grantees to exercise flexibility in choosing their subrecipients. This frees grantees to select clinical providers that meet the Title X needs of their patients, consistent with local needs and sensibilities, and within the statutory and regulatory guidelines.**